

Remarks

Claims 1-43 are pending in the subject application. Applicants acknowledge that claims 10-43 have been withdrawn from further consideration as being drawn to a non-elected invention. Although the Examiner indicated on the Office Action Summary page that claims 1-42 are pending and that claims 10-42 are withdrawn from consideration under the "Disposition of Claims" section, Applicants note that claim 43 is also pending and included within Group III in the "Election/Restriction" section on page 2 of the instant Action. By this Amendment, Applicants have amended claims 1, 2, and 5-9, canceled claims 3, 4, and 10-43, and added new claims 44-46. In addition, the title of the subject application has been amended to correct an inadvertent typographical error. Support for the amendments and new claims can be found throughout the subject specification and in the claims as originally filed. Entry and consideration of the amendments presented herein is respectfully requested. Accordingly, claims 1, 2, 5-9, and 44-46 are currently before the Examiner. Favorable consideration of the pending claims is respectfully requested.

As an initial matter, Applicants gratefully acknowledge the Examiner's indication that claims 2, 3, 5, and 6 are objected to but would be allowable if rewritten into independent form to include the limitations of any base and intervening claims.

Claims 7-9 are rejected under 35 USC §101 as directed to non-statutory subject matter. By this Amendment, Applicants have amended claim 7 to recite that the cell is "isolated." New claims 44-46 also recite that the cell is "isolated." Accordingly, reconsideration and withdrawal of the rejection under 35 USC §101 is respectfully requested.

Claims 1 and 7-9 are rejected under 35 USC §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Applicants respectfully assert that there is adequate written description in the subject specification to convey to an ordinarily skilled artisan that Applicants had possession of the claimed invention. However, Applicants note that independent claims 1 and 2 have been amended to recite that the oxalate decarboxylase enzyme of *Aspergillus* encoded by the claimed polynucleotide comprises the amino acid sequence shown in SEQ ID NO. 4 and NO. 3, respectively. Accordingly,

the rejection is moot. Reconsideration and withdrawal of the rejection under 35 USC §112, first paragraph, is respectfully requested.

Claims 1 and 7-9 are rejected under 35 USC §102(a) as anticipated by Tanner *et al.* (2001). The Tanner *et al.* reference is cited as teaching an isolated polynucleotide encoding *Bacillus subtilis* oxalate decarboxylase, *E.coli* cells transformed with said isolated polynucleotide encoding *Bacillus subtilis* oxalate decarboxylase, and frozen *E.coli* cells transformed with said isolated polynucleotide encoding *Bacillus subtilis* oxalate decarboxylase. Applicants respectfully assert that the Tanner *et al.* reference does not anticipate the claimed invention. However, by this Amendment, Applicants have amended claims 1 and 2 into independent form and to recite that the claimed polynucleotides encode an oxalate decarboxylase of *Aspergillus* having an amino acid sequence shown in SEQ ID NOs. 4 and 3, respectively. Applicants note that claims to polynucleotides encoding enzymes having the sequence shown in SEQ ID NOs. 3 and 4 were indicated as allowable in the instant Office Action. Applicants also note that claims 7-9 refer back to the polynucleotide of claim 1, as presently amended, and therefore should also now be allowable. New claims 44-46 refer back to claim 2, as presently amended, and should also be allowable. Accordingly, reconsideration and withdrawal of the rejection under 35 USC §102(a) is respectfully requested.

Claims 1 and 7-9 are rejected under 35 USC §102(b) as anticipated by Scelonge *et al.* (WO 98/42827). In addition, claims 1 and 4 are rejected under 35 USC §102(b) as anticipated by Wipat *et al.* (1998) as evidenced by Tanner *et al.* The Examiner indicates that the Scelonge *et al.* reference teaches an isolated polynucleotide encoding *Aspergillus phoenices* oxalate decarboxylase; plant host cells transformed with said isolated polynucleotide encoding *Aspergillus phoenices* oxalate decarboxylase; and lyophilized plant host cells transformed with said isolated polynucleotide encoding *Aspergillus phoenices* oxalate decarboxylase. The Examiner further indicates that the Wipat *et al.* reference teaches that chromosomal DNA was isolated from *Bacillus subtilis*, the chromosomal DNA was fragmented and cloned into plasmid pUC18, the fragments were sequenced, and a chromosomal fragment was found to contain the *Bacillus subtilis* *yvrK* gene that encodes a polypeptide that is 100% identical to SEQ ID NO. 9. Applicants respectfully assert that the references, whether taken alone or in combination, do not anticipate the claimed invention. However, as noted in regard to the rejection over Tanner *et al.*, Applicants have amended claims 1

and 2 into independent form and to recite that the claimed polynucleotide encodes an oxalate decarboxylase of *Aspergillus* having an amino acid sequence shown in SEQ ID NOs. 4 and 3, respectively. In addition, claim 4 has been canceled. Accordingly, reconsideration and withdrawal of the rejections under 35 USC §102(b) is respectfully requested.

Claims 7 and 8 are rejected under 35 USC §103(a) as obvious over Guan *et al.* (U.S. Patent No. 5,643,758) in view of the combined teachings of the Wipat *et al.* (1998) and Tanner *et al.* (2001) references as applied above. In addition, claim 9 is rejected under 35 USC §103(a) as obvious over Guan *et al.* (U.S. Patent No. 5,643,758) in view of the combined teachings of Wipat *et al.* (1998) and Tanner *et al.* (2001) as applied above and further in view of Sanderson *et al.* (1991). The Examiner asserts that the Guan *et al.* references teaches cells transformed with an expression vector encoding a protein. The Examiner further asserts that the Sanderson *et al.* reference teaches storage of wild-type and mutant bacterial strains via freezing and lyophilization. Applicants respectfully assert that the claimed invention is not obvious over the cited references, regardless of whether the references are taken alone or in combination. However, by this Amendment, Applicants have amended claims 1 and 2 into independent form and to recite that the claimed polynucleotide encodes an oxalate decarboxylase of *Aspergillus* having an amino acid sequence shown in SEQ ID NOs. 4 and 3, respectively. Applicants also note that claims 7-9 refer back to the polynucleotide of claim 1, as presently amended, and therefore should also now be allowable. New claims 44-46 refer back to claim 2, as presently amended, and should also be allowable. Accordingly, reconsideration and withdrawal of the rejection under 35 USC §103(a) is respectfully requested.


It should be understood that the amendments presented herein have been made solely to expedite prosecution of the subject application to completion and should not be construed as an indication of Applicants' agreement with or acquiescence in the Examiner's position.

In view of the foregoing remarks and amendments to the claims, Applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

Applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



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